

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

HECTOR FRIAS,	:
	: CIVIL ACTION NO. 3:05-CV-1753
Plaintiff,	:
	: (JUDGE CONABOY)
v.	: (Magistrate Judge Smyser)
	:
WARDEN JOSEPH V. SMITH;	:
D. SCOTT DODRILL, and	:
PHYSICIAN ASSISTANT MARK	:
PEORIA,	:
	:
Defendants.	:

ORDER

**AND NOW, THIS 25th DAY OF APRIL 2006, IT APPEARING TO THE
COURT THAT:**

1. Plaintiff, currently an inmate at the Federal Correctional Institution at Allenwood, White Deer, Pennsylvania, filed this *Bivens* action on December 1, 2005, (Doc. 1);¹

2. The matter was assigned to United States Magistrate Judge J. Andrew Smyser, who issued a Report and Recommendation on April 17, 2006, recommending that Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, (Doc. 20-1), should be considered a summary judgment motion and granted, (Doc. 36);

3. Plaintiff has not filed objections to the Magistrate Judge's Report and Recommendation and the time for such filing has

¹ See *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

passed.

IT FURTHER APPEARING TO THE COURT THAT:

1. When a magistrate judge makes a finding or ruling on a motion or issue, his determination should become that of the court unless objections are filed. See Thomas v. Arn, 474 U.S. 150-53 (1985). Moreover, when no objections are filed, the district court is required only to review the record for "clear error" prior to accepting a magistrate judge's recommendation. See Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998).

2. Our review of the record reveals no clear error in the Magistrate Judge's conclusion that Defendants' motion should be granted. The Magistrate Judge carefully reviewed each of Plaintiff's claims. (Doc. 36.) He applied the applicable case law and regulatory provisions in his consideration of Plaintiff's administrative detention claims, finding that Plaintiff has not exhausted these claims. (*Id.* at 5-9.) The Magistrate Judge also properly considered relevant Third Circuit Court of Appeals precedent in evaluating Plaintiff's Eighth Amendment claim relating to his eye injury, concluding that this claim should be dismissed because he has not shown deliberate indifference on the part of Defendant Peoria. (*Id.* at 11-14.) Because we find no clear error in the Magistrate Judge's findings, we will adopt his Report and Recommendation.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Magistrate Judge's Report and Recommendation, (Doc. 36), is ADOPTED;
2. Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, (Doc. 20-1), is construed as a summary judgment motion and is GRANTED;
3. The Clerk of Court is directed to close this case.

S/Richard P. Conaboy
RICHARD P. CONABOY
United States District Judge